

San Francisco Bay Conservation and Development Commission

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October 6, 2017

Application Summary

(For Commission consideration on October 19, 2017)

Number: BCDC Permit Application No. 1985.019.11B
(Material Amendment No. Eleven)
Date Filed: August 24, 2017
90th Day: November 23, 2017
Staff: Adrienne Klein (415/352-3609; adrienne.klein@bcdc.ca.gov)

Summary

Applicants: Scott's Jack London Seafood Inc., and Port of Oakland

Location: Within the Franklin Street Plaza, which is a required public access area, at Jack London Square, in the City of Oakland, Alameda County. The site is owned by the Port of Oakland and leased to Scott's Jack London Seafood Inc. (Figure 1)

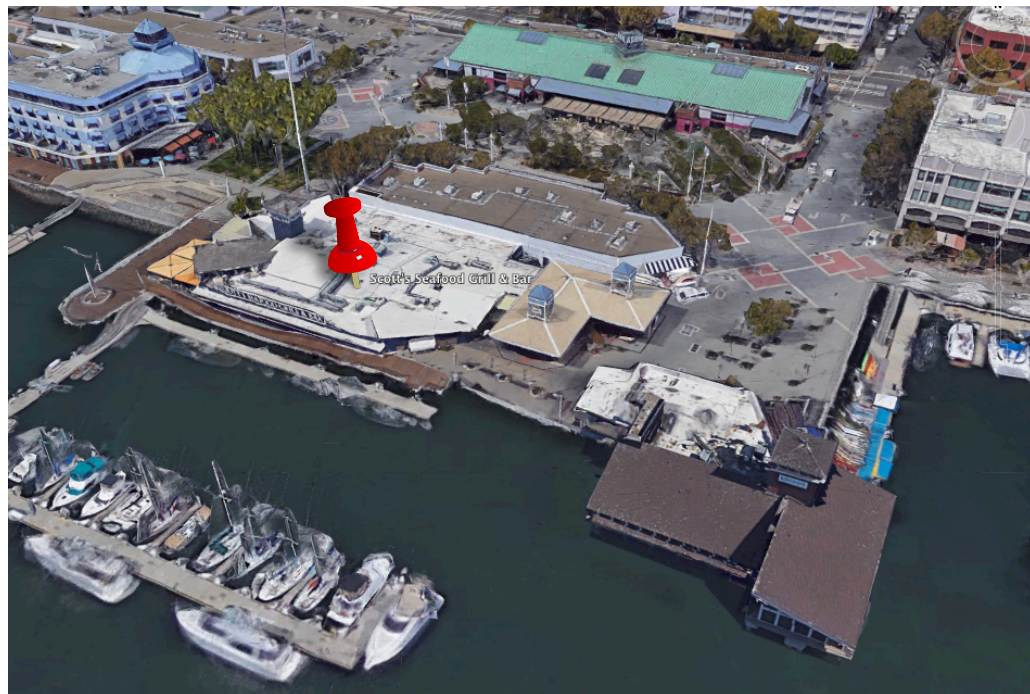


Figure 1. Project Site

Project: At a 4,400-square-foot BCDC-required public pavilion, which may be used for up to 73 days annually for private events pursuant to the existing authorization, the proposed project involves replacing authorized removable canvas fabric panels and conducting the following activities: (1) construct a 40-foot-long wall and 30 moveable wall panels; (2) construct a 60-foot-long series of structures consisting of a 13-foot-long wall and 10 moveable wall panels, a 255-square-foot storage room and stage backdrop (within a BCDC-required public access area), a 20-foot-long wall and 920-square-foot roof connecting the public pavilion with the adjacent Scott's Restaurant, thereby creating a 368-square-foot breezeway; (3) remove a permanent metal entry doorway frame; (4) install four bollards to protect the moveable wall panels; (5) expand the area covered by the permit to include the majority of the Franklin Street Plaza and, therein, reconfigure the existing public access improvements and install new public access improvements; and (6) remove the Port of Oakland as a permittee from the subject permit.¹

As a result of this project, the permittees would permanently convert 418 square feet of public access area to private use, including 255 square feet for the storage area, 159 square feet for the two permanent walls and 40 moveable wall panels, and 4 square feet for four bollards.

Subject

Permits: The project site is subject to two permits issued by the San Francisco Bay Conservation and Development Commission (Commission or BCDC). Permit No. 1985.019.022A is issued to the Port of Oakland and Permit No. 1985.019.09B is issued to the Port of Oakland and Scott's Jack London Seafood Inc., as co-permittees.

Issues

Raised: The Commission staff believes that the application for a material amendment to Permit No. 1985.019.11B raises one issue in consideration of the legal and policy provisions of the McAteer-Petris Act and the San Francisco Bay Plan (Bay Plan): (1) whether the proposed project provides maximum feasible public access, consistent with the project, including physical access to and along the shoreline, views to the Bay from other nearby public spaces, and the existing and proposed additional public amenities within the public access areas.

¹ The Port's permit would be concurrently administratively amended to reference the public access area and improvements that are being installed and maintained by Scott's under this permit and to require the Port to maintain the public access improvements that are not being implemented by Scott's. (The Port's permit will also require the Port to monitor Scott's private use of the pavilion and report the results to BCDC.)

Background

Project Site. Scott's Jack London Seafood Inc. (Scott's) operates Scott's Seafood Grill & Bar at an approximately 20,000-square-foot building located next to the San Francisco Bay in the Port of Oakland's Jack London Square area. The main restaurant entrance is located at the foot of Broadway Street, one block west of Franklin Street. In addition to a large dining room, Scott's operates six private interior event spaces. A seventh event space is located outdoors, directly adjacent to – but not abutting – the east side of the restaurant building. This 4,400-square-foot space, commonly known as “the pavilion,” is located within the 20,000-square-foot Franklin Street Plaza, a BCDC-required public access area. The open-air pavilion is L-shaped with no walls. The apex of its fiberglass roof is 40 feet high and supported by three groupings of four steel posts which support a steel truss roof frame. The roof has two signs illuminated in red at night to read “Public Pavilion.” Guests attending events at the pavilion enter from the Franklin Street Plaza through an east-facing doorway. Within the Franklin Street Plaza, limited vehicular access is allowed for deliveries and trash collection.

BCDC Permit History and Public Access Requirements. On March 6, 1986, the Commission issued the original BCDC Permit No. 1985.019.00 to the Port of Oakland (Port) for a commercial and recreational development at a six-block-long section of the waterfront between Jefferson and Harrison Streets. In relevant part, the permit required the Port to provide and maintain an approximately 20,000-square-foot (0.46-acre) public plaza (Franklin Street Plaza) located between Water Street and the San Francisco Bay. The Port's 1986 permit also required a variety of public access improvements throughout the six-block area.

On February 13, 1996, the Commission amended the subject permit (Permit No. 1985.019.08) to add Scott's Jack London Seafood Inc. as a co-permittee and, further, to authorize the construction of a 4,400-square-foot public pavilion within the public Franklin Street Plaza, which could also be used up to 73 days per year for private events.

On July 8, 1997, the Commission issued a split permit, one to the Port and the second to the Port and Scott's (Permit No. 1985.019.08A and Permit No. 1985.019.08B), effectively creating two permits. Currently, BCDC Permit 1985.019.22A covers all of Jack London Square, excepting Scott's Restaurant and the 4,400-square-foot pavilion. BCDC Permit No. 1985.019.09B (“Scott's permit”) concerns the pavilion.

The Scott's permit was last amended on October 7, 1997, to include public access amenities that were required in the permit issued for the pavilion construction but were erroneously omitted at time the permit was split between the Port and Scott's (Amendment No. Nine).

The Scott's permit currently authorizes construction, use and maintenance of the pavilion in a manner that makes it available and useable by both the general public and private parties—80 percent available to the general public (292 days/year) and 20 percent available for private events (73 days/year)—and allows Scott's to enclose the pavilion with canvas panels during private events. When the pavilion is open to the public, the permit requires Scott's to provide four public access signs, 15 public tables, and 35 chairs in the pavilion. In relevant part, the permit states:

“The proposed pavilion will be situated to provide an unobstructed 34-foot-wide view corridor from Water Street to the estuary approximately 80 percent of the time when the facility is open for public use. The existing view corridor width through this plaza is approximately 57 feet wide. The authorized pavilion design will maintain an 18-foot-wide view corridor through the plaza to the shoreline during private events [20 percent of the time]. Special Condition II-B-5 [of the permit] requires installation of...café seating to furnish the pavilion, enhancing its utility to the public for daily use.”

Further, the permit states:

“The Commission finds that the public access improvements sufficiently offset the potential for the pavilion to privatize the existing plaza and that these enhancements will improve overall the public’s use and enjoyment of the existing plaza so that the net effect of the project, given the periodic unavailability of the plaza, will result in an overall enhancement of the public access.... The Commission finds that the private use is incidental to the public access use, is in keeping with the character of the area and will not unduly obstruct public access to and enjoyment of the Bay.”

Current Enforcement Action – Scott’s and the Port. The application for Material Amendment No. Eleven to Permit No. 1985.019.09 requests the approval of unauthorized construction that occurred more than four years ago. This unauthorized construction is among the subject of Commission Cease and Desist and Civil Penalty Order No. CDO 2017.01, issued on April 7, 2017. In the subject amendment request, the applicants are seeking after-the-fact permission to retain most of this already-built structure. Although the construction of the permanent walls, the moveable wall panels, the storage facility and stage backdrop, and the pavilion roof extension and breezeway is nearly complete, the Commission’s consideration of Scott’s material amendment request should proceed as though existing unauthorized activity is not in place at the project site.

Beginning in 2012, a year before commencing the unauthorized construction, Scott’s informed the Commission staff of its desire to replace the temporary canvas fabric panels with a moveable wall system that would benefit the public and Scott’s by utilizing a more attractive enclosure that it stated would be easier and faster to open and close. Expediting the opening of the enclosure after a private event would enable the pavilion to be returned to a public space sooner than was possible with the labor-intensive process of hanging the fabric panels by hand using a mechanical lift. During a year-long series of discussions, Scott’s provided the BCDC staff with five sets of plans for a permanent enclosure system with walls and moveable panels. The Commission staff rejected the initial design because it would have resulted in too many permanent features at the edge of the public pavilion that would have privatized the pavilion and, thus, would have been inconsistent with the Commission’s public access requirements for the site. The staff continued to provide Scott’s with design guidance and the design subsequently improved. However, the staff remained concerned about the proposal for the following reasons: (1) a proposed metal entry at the eastern face of the pavilion and a 40-foot-long wall at the north face of the pavilion could adversely impact the open-air feeling of the pavilion, potentially affect pedestrian circulation at the Franklin Street Plaza, and block some views of

the Oakland Estuary from Water Street and the Franklin Street Plaza; and (2) the proposed activity was not accompanied by a public access proposal to offset the adverse permanent impacts on the existing required public access area. The staff suggested various offsetting options to preserve existing views and maximize pedestrian circulation including: the removal of the proposed metal entry doorway; a reduced length of the proposed 40-foot-long wall (to 30 feet) to be consistent with the layout of the adjoining retail space north of the pavilion; a decrease in the number of proposed permanent walls and an increase in the number of proposed moveable wall panels; and the provision of new public access improvements in the Franklin Street Plaza and the pavilion to offset the inevitable impacts of installing permanent features in a public access area.

Between December 2012 and March 2013, while the proposed design was still under development and discussion with BCDC staff, Scott's initiated and practically completed the construction of a permanent pavilion enclosure system without BCDC-staff plan approval or Commission authorization and in a manner inconsistent with the staff's previous direction. Further, during a resulting site visit, the Commission staff discovered other unpermitted work, including a 920-square-foot roof extension (dating to March 2000) and a 255-square-foot storage area and stage backdrop (dating to July 2011), which effectively joined the formerly free-standing pavilion to Scott's Restaurant, and are also the subject of the pending amendment request. It was during this period of time that the BCDC staff also determined that on many occasions between 2004 and 2014, Scott's used the public pavilion for private events more than 73 days per year, among other pavilion misuse violations.

Between 2013 and 2016, the Commission staff attempted to obtain a complete application from Scott's for a potentially approvable project and also to negotiate a resolution to enforcement issues at the site (Enforcement Case No. ER2013.009).

On October 20, 2016, the Enforcement Committee adopted the Executive Director's recommended enforcement decision including a proposed Stipulated Commission Cease and Desist and Civil Penalty Order No. CDO 2016.03 that staff had negotiated with Scott's and the Port. Among other provisions, the proposed stipulated order would have required the permittees to submit a complete application for the as-built structure (excluding the permanent metal entry doorway) and allowed the permittees to request authorization from the Commission to increase private use of the pavilion to a maximum of 124 private events per year. However, on November 3, 2016, the Commission rejected the Enforcement Committee's recommended enforcement decision. The Commission provided comments on certain issues raised by the alleged violations and directed the staff to commence a formal enforcement proceeding if the staff, Scott's and the Port were unsuccessful in returning to the Enforcement Committee within two months with a different proposed stipulated order that responded to the direction provided by the Commission (including that the enforcement proceeding be separated from any future request to amend the permit to increase private use of the pavilion).

In mid-December 2016, the staff determined that it would not be possible to reach an agreement with Scott's and the Port on a revised stipulated order that would be acceptable to the Commission. On December 19, 2016, the Executive Director issued a Violation Report/ Complaint for the Imposition of Administrative Civil Penalties to Scott's and the Port. On February 16, 2017, the Enforcement Committee adopted the Executive Director's recom-

mended enforcement decision, including a proposed Commission Cease and Desist and Civil Penalty Order, with certain modifications. On April 6, 2017, the Commission voted to adopt the Enforcement Committee’s recommended enforcement decision, including issuing Commission Cease and Desist and Civil Penalty Order No. CDO 2017.01 (Order) which, among other conditions, required Scott’s and the Port to submit a complete application for all of the as-built structures (storage area, roof, breezeway, walls and wall panels), the removal of the permanent metal entry doorway, and including a public access proposal. The Order states that the “application shall not include a request to increase the use of the pavilion for private events.” On August 24, 2017, co-permittees Scott’s and the Port of Oakland submitted a complete application for Material Amendment No. Eleven.

Project Description

Project

Details: The applicants, Scott’s Jack London Seafood Inc., and the Port of Oakland, describe the proposed project as follows:

In the 100-foot shoreline band:

1. On the north side of the public pavilion, a 40-foot-long wall with an exit door and 30 moveable wall panels, two of which each contain a door and one fixed bollard (partially after-the-fact);
2. On the west side of the public pavilion, a 60-foot-long series of structures comprised of a 13-foot-long wall with an exit door and 10 moveable wall panels, a 255-square-foot storage area and stage backdrop, and a 368-square-foot “breezeway” that includes a 20-foot-long wall covered by a 920-square-foot roof that connects the restaurant to the pavilion (partially after-the-fact);
3. On the east side of the public pavilion, removal of an unauthorized metal entry doorway and installation of three movable bollards to be used when the pavilion is in private use; and
4. Throughout the Franklin Street Plaza, which includes the public pavilion, public access improvements consisting 32 tables and 69 chairs (15 tables and 35 chairs are existing but will be replaced), 16 benches (14 are existing), four new umbrellas, 12 planters with new landscaping (14 are existing and two will be removed), five existing trashcans, three existing tree grates and three trees (one tree exists), night lighting consisting of down lighting from the pavilion and string lights in the plaza, one telescope (two are required and none exist) and four public shore signs (four are required and three exist).

Public

Access: As proposed, the project provides for a reconfigured design and layout for the public access improvements in the Franklin Street Plaza including the pavilion. The design would result in a combination of existing and new public access improvements placed in a new layout that would create a central procession from Water Street through the Franklin Street Plaza to the Bay, flanked by two

seating areas. The furnishings in the two seating areas would match, communicating that the entire plaza—including the pavilion—is open to the public. The furniture type and layout would improve access to the Bay shoreline through and, when necessary, around the pavilion and public views would be maintained.

Schedule

and Cost: Project construction is complete, with the exception of the removal of the metal entry doorway and the installation of two moveable wall panels with doors, doors in the west side permanent wall, four bollards and the public access improvements. According to the permit applicants, the total project cost is approximately \$596,000.00.

Staff Analysis

- I. **Issues Raised:** The staff believes that the application raises one primary issue regarding the project’s consistency with McAteer-Petris Act and the San Francisco Bay Plan (Bay Plan): (1) whether the proposed project provides maximum feasible public access, consistent with the project, including physical access to and along the shoreline, views to the Bay from other nearby public spaces, and the existing and proposed additional public amenities within the public access areas.

- A. **Public Access.** In assessing whether the proposed project would provide maximum feasible public access consistent with the proposed activities, the Commission relies on the McAteer-Petris Act, the Bay Plan policies, and public access requirements of similar previously-permitted projects.

Section 66602 of the **McAteer-Petris Act** states, in part: “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” Section 66632.4 of the **McAteer-Petris Act** states, “within any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses...the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.”

Bay Plan **Recreation** Policy 3.h states “[w]ater-oriented commercial recreational establishments, such as restaurants, specialty shops, private boatels, recreational equipment concessions, and amusements, should be encouraged in urban areas adjacent to the Bay.”

Bay Plan **Public Access** Policy 1 states, in part, “a proposed fill project should increase public access to the Bay to the maximum extent feasible....” Policy 2 states, in part, “...maximum feasible public access to and along the waterfront...should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided.” Policy 7 states, in part, “public

access improvements...should be designed and built to encourage...movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy 9 states, “access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available....” Policy 12 states, “the Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Appearance, Design, and Scenic Views** Policy 2 states, in part, “all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” Policy 4 states, in part, “structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline.” Policy 8 states, in part, “shoreline developments should be built in clusters, leaving areas open around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay.”

1. **Maximum Feasible Public Access.**

- a. **Existing Public Access.** Permit No. 1985.019.22A, the Port’s permit, between Franklin and Webster Streets, authorizes public access enhancements such as paving guardrails, lighting and one fountain within the Central Basin promenade. The Port’s permit requires the dedication of a 32,300-square-foot public plaza between Scott’s and Kincaid’s and around Kincaid’s to the existing pedestrian mall on Water Street. The staff-approved plans, dating from July, 1987, require public access improvements consisting of different types of lighting, a UN flagpole and plaque, 6 benches, 8 trees and grates, 17 planters, and 8 trash cans throughout the plaza including the area now occupied by the pavilion. However, since 1987, the location and quantity of these furnishings has changed.

Permit No. 1985.019.09B, the Scott’s permit, requires public access improvements including a 4,400-square-foot, L-shaped pavilion. The open air pavilion is required to have a number of public amenities, including, in part, light fixtures 15 feet above the existing plaza, a revised paving pattern using pavers which match existing pavers and reflect the shape of the pavilion, Tivoli lighting, grade-level up lighting, fabric panels with transparent window panels located at the perimeter of the pavilion roof and colorful flags and banners which do not include the names of any business or product. Signs on the pavilion towers are required to be neon and read “Public Pavilion”. The Scott’s permit also requires at least 15 tables and 35 tables (to match those in a nearby plaza on the north

side of Water Street that has since been redesigned) and four public shore signs (two fixed and two moveable), to be in place at all times, except when the pavilion is needed for approved private events or other approved public events, and two sets of permanent, pedestal style binoculars for public use, free of charge.

- b. **Proposed Changes to the Pavilion and Dedicated Public Access.** The proposed project involves changes to the existing requirements of two BCDC permits (see Footnote 1, bottom of page 2). Within and adjacent to existing required public access areas, the applicants propose to replace the fabric panels used to enclose the pavilion for private events by constructing: (1) a 40-foot-long wall and 30 moveable wall panels (north side of the pavilion) (within a public access area required by the Scott's permit); (2) a 60-foot-long series of structures consisting of a 13-foot-long wall and 10 moveable wall panels, a 255-square-foot storage room and stage backdrop (within public access areas required by the Scott's and Port permits), a 20-foot-long wall and 920-square-foot roof connecting the public pavilion with the adjacent Scott's Restaurant, thereby creating a 368-square-foot breezeway (west side of the pavilion); and (3) four bollards to protect the moveable wall panels (within a public access area required by the Scott's permit). Additionally, the application includes a proposal to expand the area covered by the permit to include the majority of the Franklin Street Plaza and, therein, reconfigure the existing public access improvements and install new public access improvements.

The applicants state that since 1996, when private events commenced in the pavilion, they have brought up to 23,000 new visitors to Jack London Square, which was a stated goal of the project when it was originally approved. They state that the original enclosure system was a plastic/vinyl tent wall system that required replacement at considerable cost every five years due to wear and tear. It was drafty, energy inefficient, did not provide efficient emergency exit systems, and was visually unattractive. It also required four staff members up to four hours to unpack and install the system each time there was a private event and an additional four hours remove and store it. The application states that the replacement wall system is an innovative design-build system using a manufactured product that Kalwall, the manufacturer, states is the most highly insulating, diffuse light-transmitting, structural composite technology in the world. Each of the 40 moveable panels is approximately 5 feet wide by 15 feet high. They are suspended on specially-designed trolley hangers that roll in a tubular-track system that is welded in place and surrounds the underside of the interior roof perimeter and, therefore, is not visible from outside the pavilion. Each wall panel is rolled into place to enclose the pavilion to provide an insulated and secure system during private events. The panels are rolled back into a stackable wall location when the pavilion is in public use. It takes 30 to 45 minutes to roll the moveable panels into private use. The same time is needed to reverse

the process. The applicants state that this saves up to a total of seven hours of set up and break down time from the old system, resulting in a gain of seven hours of public access on each event day.

The applicants state that the panels are stored outside any view corridors and adjacent to existing structures that already obscure views. They state that the concept of the public access proposal is to enhance the public's enjoyment of the Franklin Street Plaza and attract more pedestrians by uncluttering an area that appears to have become a backwater of disjointed activity, including unplanned clusters of furnishings, planters and dying trees. Instead, they state that the new plaza design will create a visible pathway to the waterfront while also protecting light poles and trees from vehicular damage.

- **Remove Metal Entry Doorway.** On the east side of the pavilion, the applicants have proposed to remove a constructed permanent door structure from a dedicated public access area and to replace it with moveable wall panels that contain free-swinging doors. Since 2012, the BCDC staff has consistently stated that it could not recommend approval of the metal entry doorway as it would have daily adverse impacts on existing required public access and view corridors.

At its February 10, 2014, meeting the DRB advised the staff and the applicants that permanent door structure should be removed because it makes the public space feel private and creates a physical and visual obstruction. At the April 6, 2015 DRB meeting, Scott's presented a revised proposal to remove the metal entry doorway and replace it with moveable wall panels that contained free-swinging panel doors. The DRB expressed its satisfaction with this proposal, stating that this was an improvement to the project.

One Board member asked whether one of the required exits for the restaurant is the door that opens into the pavilion and, if so, how this is addressed under code requirements when the pavilion is in private use mode. On December 5, 2016, the City of Oakland issued a discretionary approval for this project and determined that local life safety requirements for egress during an emergency would be met by the existing door from the restaurant into the pavilion and by the proposed free-swinging panel doors from the pavilion into the Franklin Street Plaza.

- **North Pavilion Wall.** The applicants propose to install a 40-foot-long wall, stack 30 moveable wall panels next to it, and add one bollard on the north side of the pavilion in a public access area required by the Scott's permit. It is staff's understanding that the purpose of the wall is to support the moveable wall panels. The purpose of the panels is to enclose the pavilion for private events and the purpose of the bollard is to protect the wall from being damaged by delivery vehicles using the corridor north of the restaurant.

Since 2012, the staff has consistently communicated to the applicants that unless the 40-foot wall is shortened, it could have potential adverse impacts on the public pavilion. The wall, constructed along the pavilion boundary,

would likely privatize the public space, create an enclosed rather than open-air feeling in the northwest section of the space, and adversely impact Bay views from the Water Street side of the Franklin Street Plaza. The staff advised that these issues could be minimized by shortening the wall from 40 to 30 feet, which the staff suggested because, at that length, it would line up with the wall of the adjacent retail space, located north of the pavilion.

At its February 10, 2014 meeting, the DRB advised the staff and the applicants that open views be maintained through the pavilion towards the Bay. A variety of opinions regarding ways to accomplish this were expressed. Some Board members stated that all permanent structures along the north wall should be removed. Others stated that the proposed wall and stacked panels on the north side of the pavilion should be shortened so that they do not extend beyond the corner of the adjacent retail building where it angles north. One Board member stated that a wall on the north side might provide some benefit by screening the service functions that occur north of it; another recommended that alternate means of enclosing the pavilion, such as an accordion wall or roll-up approach, be investigated to reduce physical and visual obstructions from the enclosure while in both public and private use mode. Based on some of the DRB's comments, Scott's temporarily revised its proposal to reduce the length of the north wall from 40 to 30 feet. At the April 6, 2015 DRB meeting, the DRB expressed its satisfaction with the shortening of the north wall to 30 feet, stating that this was, in conjunction with removal of the permanent metal entry doorway, a great improvement to the project. However, since April 6, 2015, the applicants have withdrawn their proposal to construct a 30-foot-long wall on the north side of the pavilion.

The DRB did not review the bollard proposal, which would be located on the east boundary of the pavilion area and which the staff believes would have minimal if any adverse impacts on public access.

- **West Pavilion Walls and Storage Area.** On the west side of the pavilion adjacent to the back of Scott's Restaurant building, the applicants propose to construct a 60-foot-long series of structures comprised of a 13-foot-long wall with an exit door and 10 moveable wall panels, a 255-square-foot storage area and stage backdrop, and a 368-square-foot "breezeway" that includes a 20-foot-long wall covered by a 920-square-foot roof that connects the restaurant to the pavilion.

The 13-foot-long wall, moveable panels, storage area and stage backdrop are all within dedicated public access areas. The proposed roof, 20-foot-long wall and breezeway that connect the pavilion to the restaurant are located in the Commission's 100-foot-shoreline band jurisdiction but are not located in a required public access area.

Any structure along the pavilion boundary would likely privatize the public pavilion and create an enclosed rather than open-air feeling in the northwest section of the space. In addition, the new structures create an approximately 256-square-foot remnant public access area west of the pavilion that, while not physically occupied by the new wall, wall panels or storage area, becomes a less useable public space (and has in the past been used by Scott's as a storage area). The wooden stage backdrop, which is painted as stage curtains, does not match the pavilion materials or the waterfront setting and, as a result, is an anomaly that has a privatizing effect on the public pavilion. Beyond directing the applicants to remove the stage backdrop, the staff did not provide any direction on how these issues could be minimized.

On February 10, 2014, the DRB advised that the storage area and wall extensions on the west side of the pavilion block public access in this required public access area and instead represent an extension of Scott's Restaurant. The Board stated that the west side improvements that occupy presently required public access areas would permanently remove them from public access purposes and divide a single area into two areas, likely rendering the remnant public access area between the east wall of the building and the west wall of the pavilion less valuable than it was as part of a single larger public access area. The DRB members also agreed that the privatizing character of this stage backdrop is at odds with the public character of the pavilion.

The applicants have not modified the proposal to respond to the DRB's comments.

- **Transparency of the Pavilion Wall Panels.** The fabric panels (that are currently authorized by the Scott's permit) had two transparent windows on the Bayside of the pavilion. The proposed project has four tempered glass windows, two each on the south (bay) and east (entrance) sides of the pavilion, respectively. On February 10, 2014, the DRB advised that the pavilion walls should be more transparent to allow for greater visibility into the pavilion when it is in private use mode. The applicants did not respond to the DRB's direction.
- **Franklin Street Plaza (including the pavilion) Public Access Proposal.** There are several eras of public access improvements at Jack London Square. Some plazas have been entirely redesigned and showcase palm trees and geometrically arranged concrete seatwalls. The older ones, such as in the Franklin Street Plaza, have been in place for at least 30 years. The Franklin Street Plaza contains a UN flagpole and commemorative plaque, 10 decorative light poles, hanging planters, 3 tree grates and one tree, 14 wooden benches, 14 concrete planters with hand-watered landscaping, and 5 concrete trashcans. The public access improvements are located east of the pavilion in the center of the plaza and south of the pavilion next to the shoreline. No

seating faces the pavilion. Within the pavilion, existing lightweight metal tables and chairs are useable but do not match the public seating in other areas of the Franklin Street Plaza.

To offset the permanent impacts associated with the proposed addition of permanent walls, moveable wall panels and other proposed structures on the north and west sides of the pavilion, and the resulting reduction of public access area, the applicants have proposed a new design of the Franklin Street Plaza, which is intended to draw more people to and through both the plaza and pavilion. Existing and new public access improvements would be reconfigured in a manner that creates two seating areas and a central procession from Water Street through the Franklin Street Plaza to the Bay and of a design that would match, communicating the public nature of the entire plaza, especially the pavilion. Access to the Bay through and around the pavilion would be maximized by the layout of the public furnishings consisting of a line of landscaped planters and string lights placed at an angle in the plaza, and the placement of a series of matching and lightweight chairs and tables throughout the plaza that can be moved around by the public. Two thirds of the tables and chairs located in the pavilion would be stored in the storage area when the pavilion is in private use and one third would be temporarily placed in the Plaza.

The public access proposal consists of re-using many existing site furnishings but placing them in an improved layout. By placing six planters in a diagonal line through the plaza that runs from Water Street to the shoreline, the planters would encourage the public to walk to the water (and past the pavilion, which is especially important when it is in a closed, private use mode). String lights at the planters would make the procession “visible” at night. Some benches would be relocated closer to the shoreline for increased Bay viewing and others would face the pavilion for an increased connection between the pavilion and the plaza. In addition to re-using the existing site furnishings and adding matching moveable tables and chairs, the applicants would provide umbrellas for added color and shade in the plaza.

This public access proposal addresses some but not all of the DRB’s comments. Following the DRB’s February 10, 2014 review of the project that lacked a public access proposal, Scott’s submitted a public access plan consisting of many vertical elements such as trees and kinetic sculptures in the Franklin Street Plaza and along the shoreline. In response, on April 6, 2015, the DRB advised that greater efforts should be made with the placement of site furniture, signage and possibly food carts to attract people to use the pavilion when it is available for public use, such as by providing similar site furnishings both within and outside of the pavilion to decrease its private appearance and draw the public into it. The DRB members also stated that the design of the public access in the Franklin Street plaza and along the shoreline edge should be open and simple in design. They advised Scott’s to emphasize the view corridor to the Bay by minimizing vertical elements and

only using them if they would help “frame” the view and create a “procession” towards the water. They advised that the proposed trees and sculptures block the view to the water. Many Board members discouraged using any trees since they would block views to the water, stating that there should be simplicity in all design choices. For example, the DRB suggested that simple concrete seatwalls could be used rather than benches and that paving enhancements may not help unless tied to an overall design framework. The DRB advised that the maritime character of the setting should be emphasized in all design treatments and that a single element, such as a boat or sail, could enhance and not distract from the view and even strongly attract people to the Franklin Street Plaza.

The current public access proposal captures the two most important design principles that were recommended by the DRB: (1) to place site furnishings in a manner that integrates the pavilion into the plaza; and (2) use the site furnishings to create a procession to the shoreline. The new layout, including the public seating arrangement, would result in a better connection between the pavilion and the plaza at-large, and the linear nature of the layout would encourage movement through the plaza from Water Street to the shoreline and visa versa.

The re-use of the majority of the existing furnishings is appropriate at this time because the Port’s property management company is in the process of developing a proposal to replace the existing furnishings. The view corridor required by the existing BCDC permit is not affected by this development proposal. The proposed public shore signage duplicates existing public access signage and is adequate.

- **Pavilion Protecting Bollards.** When it is in private use mode, the applicants propose to install three bollards in the public access area along the east pavilion edge to protect it from damage by vehicles. The bollards are expected to have no impact on existing required public access if installed only when the pavilion is in private use mode in a manner that is consistent with the provisions of the permit. The DRB has not reviewed this project element.

The proposed public access improvements are shown on Exhibit D.

- c. **Similar Permitted Projects.** In evaluating whether the proposed public access is the maximum feasible consistent with the project, the Commission looks, in part, to its past actions on comparable projects. In rare instances, the Commission has allowed permittees to convert originally required public access to other uses and to offset the lost public access by, in two cases, improving the remaining existing required public access and, in a third case, requiring in lieu nearby access, as summarized in Table 1 below.

BCDC Permit/BCDC Permit Application	Authorized/Proposed Project	Required/Proposed Public Access
Fox Television Stations, Inc. Permit No. 1978.036.04	At 2 Jack London Square at the foot of Madison Street in the City of Oakland, construct a 3,425-square-foot area containing portions of two dish-shaped satellite transmitters, and a mechanical equipment facility (after-the-fact), and improve the adjacent public access by providing an all-weather pathway with a minimum width of 14 feet within a landscaped public access area ranging from 61 to 110 feet wide and covering approximately 25,280-square-feet of area, partly in the 100-foot shoreline band.	1,425 square feet of area was converted from public access to an equipment facility. This represents a five percent loss of the total public access area, which was offset by the reconstruction of the public access area with a new layout including a more linear and wider shoreline trail, better and more seating consisting of backed benches and picnic tables, trash containers, lighting and signage and an entirely new plant palette and landscape design.
City of Alameda Permit No. 1979.039.14F	At the Marina Village Boardwalk Overlook located at 1030 Marina Village Parkway, Alameda, reduce the size of an existing dilapidated overlook from 920 square feet to a new 133-square-foot overlook and improve the adjacent shoreline park by repaving an approximately 15,650-square-foot section of the San Francisco Bay Trail, re-grading an approximately 17,100-square-foot landscaped area, re-landscaping with native vegetation an approximately 85,280-square-foot landscaped area, and installing an approximately two-foot-wide decomposed granite trail on both sides of the existing approximately 8-foot-wide public access pathway, partly in the 100-foot shoreline band.	A 920-square-foot public overlook collapsed in the Bay and was removed to ensure safe conditions for the general public. It was replaced with a smaller overlook, and the reduced public benefit was offset by trail repair and expansion, landscaping and surface improvements, seating amenities, exercise areas, trash receptacles, signage, which were found to result in an overall public benefit including reduced Bay fill.
Port of Oakland Permit No. 1985.019.09	In the Broadway Street Plaza at Jack London Square, install an 842-square-foot outdoor dining area in the Broadway Street corridor on the west side of Scott's Jack London Seafood Restaurant, partly in the 100-foot shoreline band.	402 square feet of the new outdoor dining area was located in a required public access area, which was offset by the requirement to provide 3,300 square feet of new public access in the mall between Franklin and Webster Streets and the removal of a lightpole near the outdoor dining area that impeded the pedestrian flow of traffic.
Scott's Jack London Seafood Inc. and the Port of Oakland Permit Application No. 1985.019.11B	Installation of permanent private improvements in a dedicated public access area, resulting in a reduction of 418 square feet of public access in a 4,400-square-foot area, entirely within the shoreline band.	This represents a 9.5 percent loss of the pavilion public access area, offset by reconfiguring existing, and adding new, public access improvements placed in a manner that creates two seating areas and a central procession from Water Street through the Franklin Street Plaza to the Bay and of a design that will match communicating the public nature of the entire plaza, especially the pavilion.

Table 1. Summary of BCDC-Approved Projects and the Proposed Project (shown in bold)

Two of the similar projects resulted in a decrease in the physical area of public access, which was offset by improving the remaining public access area and improvements by widening the shoreline trails and installing new landscaping, furnishings and amenities. In the third similar project, the overall area of required public access increased because the mitigation for decreasing public access close to the Bay was to provide new and a larger area of public access farther away from the Bay, preserving access to the Bay. This latter approach is much more typical than the former. However, sometimes it may be infeasible to establish a new public access area. For the proposed project, the offset should be measured by the overall qualitative result of the new public access rather than simply quantitatively. As shown, the precedent exists to find that a smaller area can be qualitatively improved. The Commission must decide if that threshold would be met by this project and its associated public access proposal.

The Commission should determine whether the proposed project provides maximum feasible public access, consistent with the project, and is consistent with the Commission's San Francisco Bay Plan policies on Recreation, Public Access, and Appearance, Design and Scenic Views.

B. Review Boards

1. **Design Review Board.** The project was twice reviewed by the Design Review Board on February 10, 2014, and April 6, 2015.
2. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the proposed project because no Bay fill would be involved.

- C. **Environmental Review.** Pursuant to the California Environmental Quality Act (CEQA), the City of Oakland Bureau of Planning Zoning Division adopted a Notice of Exemption on December 5, 2016, making the determination that the project qualifies for review as a "small structures" categorical exemption pursuant to Section 15303, Section 21084, Article 19.

- D. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

E. Relevant Portions of the McAteer-Petris Act

1. Section 66602
2. Section 66632

F. Relevant Portions of the San Francisco Bay Plan

1. *San Francisco Bay Plan* Policies on Public Access
2. *San Francisco Bay Plan* Policies on Appearance, Design and Scenic Views

Exhibits

- A. Regional and Vicinity Maps**
- B. Exhibit B of Permit No. 1985.019.09B**
- C. Boundary of Area Subject to the Permit and Proposed Project Plans (Seven sheets, Rubio Bowden Design)**
- D. Proposed Public Access Improvements (Sheets L.2.0 and L.2.2, Camp & Camp)**
- E. Four photographs of the Franklin Street Plaza and pavilion, dated April 6, 2017 by Adrienne Klein**